IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 394 OF 2002

Smt. Sarojini R. Ranade & ors .... Petitioners

versus

State of Maharashtra & ors. ... Respondents.

Shri A.V.Anturkar for the petitioner.
Shri S.R.Nargolkar AGP for Respondents 1 to 4.
Shri R.G.Ketkar for Respondents 5 and 6.

CORAM; V.G. PALSHIKAR &
V.R. KINGAONKAR, JJ.

DATED; 31st MARCH, 2006.

JUDGMENT (Per Palshikar, J.):

1. By this petition, the petitioner has challenged the award passed by the Government of Maharashtra under the provisions of Land Acquisition Act 1894 acquiring some land belonging to the petitioners for rounding off roads at the intersection. This undisputably is a public purpose.

2. we must note certain facts giving raise to the present petition. The acquisition of land for the purposes of rounding off roads at intersection was required by the Municipal Corporation, Pune. It therefore requested the Government of Maharashtra to

undertake acquisition proceedings under the Land Acquisition Act 1894. Proceedings were accordingly commenced and they ultimately culminated in an award passed under section 12 of the Act, which was passed on 18-9-1987.

3. According to the petitioner, the Standing Committee of Pune Municipal Corporation passed a Resolution on 13th June 1989 whereby it was resolved that acquisition of land should be directly related to rounding off roads only, which is needed for fulfilling the public purpose. Though the Resolution was passed in 1989, nothing in that regard was done by the Corporation or the petitioner for several years.

4. Though the acquisition took place in the year 1987, the petitioner avoided delivery of possession by taking recourse to several legal remedies. Ultimately even in this petition there was a stay of taking possession. The main contention of the petitioner is that the land necessary for the purposes of rounding off at the intersection of roads, is only 4 sq. meters and therefore acquisition of 33.45 sq. mtrs. of land is unnecessary and to that extent, there is no public purposes behind the acquisition. The petitioners also expressed their willingness to hand over 4 sq. mtrs.

or more than whatever is factually required for such rounding up.

5. It is pertinent to note at this stage that the writ petition has been filed in the year 2002 after the process of rounding off was almost completed. No reasonable explanation is given for such inordinate delay. When the matter was taken up for final hearing, objection was raised on behalf of the respondent that the petition itself is not tenable in view of the judgment of the Supreme Court of India, which has unequivocally laid down that after the award under section 12 of the Act is passed, the award cannot be impugned by way of writ petition for whatever reasons. Reliance was placed on the judgment of the Supreme Court in **The Municipal Council, Ahmednagar & anr. Vs. Shah Hyder Beig and others reported in 2000 (2) Bom.C.R. page 678.** This contention raised on behalf of the respondent was opposed by the petitioner relying on the same judgment of the Supreme Court of India in that regard. We will therefore consider the preliminary objection first. The fact that award was made in the year 1987 and the writ petition is filed in the year 2002 is not disputed. The petition is thus filed 15 years after the award was finalised. There is no reasonable explanation coming forth. Thus the inordinate delay in seeking the exercise of writ

jurisdiction itself is fatal for maintaining of this petition. Secondly award having been passed no writ jurisdiction can be exercised in view of the judgment of the Supreme Court of India in the case of Ahmednagar Municipal Council. In that judgment, the Supreme Court has observed that unexplained delay of about 16 years, would itself be sufficient for declining exercise of writ jurisdiction under Article 226 of the Constitution. The Supreme Court has clearly laid down that after the award is passed no writ petition can be entertained. The observations of the Supreme Court are liable to be noted verbatim:

> **" In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court in one of recent cases (C. Padma & others Vs. Dy. Secretary to the Govt. T.N. & others, 1997(2) S.C.C. 627.**

6. The above observations were recorded by the Supreme Court of India, after noticing earlier decisions of the Supreme Court of India, in the face of this observation, therefore it is not possible to entertain this petition on merits.

7. However, assuming that the petition is tenable even after delay of 16 years, no case for interference is made out by the petitioner. The contentions made by the petitioner in the petition regarding extent of land, are denied by the Corporation by its affidavit-in-reply. According to the petitioner, 4 sq.mtrs. land is required for chambering and according to the Corporation 34 sq.mtrs, is required for chambering and road widening. Whether 4 sq.mtrs, is required or 34 sq.mtrs is required is obviously the disputed question of fact. Heavy reliance was placed on the Resolution of the Standing Committee passed in the year 1989 whereby it was resolved by the Standing Committee of the Corporation, only that much land is to be acquired as it necessary for the purpose of chambering. In the present case only 4 sq. mtrs. being necessary, acquisition of the rest is not for the public purpose is in violation of the Standing Committee Resolution. According to the petitioner, this Resolution was passed in the year 1989. The petitioner had adequate efficacious remedy to get this Resolution implemented by recourse of section 451 of BPMC Act

8. The contention of the petitioner that the public purpose does not exist is also ill-founded because the petitioners admit that rounding off the intersections

of roads is necessary and is for public purpose. How much land is necessary for that purpose is in dispute. It cannot be gone into in writ jurisdiction as we have already observed. There can be no dispute about the proposition that the purpose for which the land is sought to be acquired must remain till the time the land is put for that purpose. In this case the purpose is not denied. Only the extent to which the land is necessary is disputed. All the judgments of the Supreme Court relied upon by the learned counsel for the petitioner in this regard are therefore not applicable. There is thus no substance in this petition and the same is dismissed. Interim relief granted earlier is also vacated. Civil Application if any pending is also dismissed. There shall be no orders as to costs.

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